TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1954

No. 40

BESSIE B. COX AND JOHN G. THOMPSON, AS ADMINISTRATORS OF THE ESTATE OF SID COX, DECEASED; HENRIETTA A. FARRINGTON, AND HOWARD C. FARRINGTON, PETITIONERS,

vs.

ARTHUR ROTH, AS ADMINISTRATOR OF THE ESTATE OF JAMES DEAN, DECEASED

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

PETITION FOR CERTIORARI FILED APRIL 16, 1954

CERTIORARI GRANTED JUNE 7, 1954

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., AUGUST 5, 1954.

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[fol. a] [Caption omitted]

[fol. 1]

IN THE UNITED STATES DISTRICT COURT SOUTHERN DISTRICT OF FLORIDA

No. 4665-M-Civil

Arthur Roth, as administrator of the estate of James Dean, deceased, Plaintiff,

versus

Bessie B. Cox and John G. Thompson, as administrators of the estate of Sid Cox, deceased, Henrietta A. Farrington, and Howard C. Farrington, Defendants

Amended Complaint. Plaintiff Demands Trial by Jury—Filed November 7, 1952

Action under special rule for seamen to sue without security or prepayment of fees for the enforcement of the laws of the United States common and statutory for the protection of the health and safety of seamen at sea.

Plaintiff, complaining of the defendants, respectfully states and alleges upon information and belief:

1. That the defendants are residents of Dade County, Florida.

[fol. 2] 2. That at all times hereinafter mentioned, Sid Cox and H. C. Farrington were residents of Dade County, Florida.

3. That at all times hereinafter mentioned, Sid Cox and H. C. Farrington owned a certain steamship or vessel known as the M/V "Wingate."

4. That at all times hereinafter mentioned, Sid Cox and H. C. Farrington owned, operated, managed, and controlled the aforesaid vessel.

5. That prior to the commencement of this action, Arthur Roth was duly appointed administrator of the estate of James Dean.

6. That Sid Cox is now deceased, and Bessie B. Cox and John G. Thompson have been appointed administrators of his estate.

7. That H. C. Farrington is now deceased and his estate has been distributed and closed.

8. That the estate of H. C. Farrington was distributed to the defendants Henrietta A. Farrington and Howard C. Farrington.

9. That the defendants Henrietta A. Farrington and Howard C. Farrington are made parties to this suit by virtue of them being distributees of the estate of H. C. Farrington.

10. That at all times hereinafter mentioned the decedent, James Dean, was employed on the aforesaid vessel in the capacity of a seaman.

[fol. 3] 11. That at all times hereinafter mentioned, there was and still is in force and effect an Act of Congress known as the Merchant Marine Act, approved June 5, 1920, Sec. 33; commonly know- as the Jones Act, 46 U. S. C., Sec. 688, which Act is applicable hereto.

12. That by reason of the employment of the decedent, James Dean, aboard the vessel as aforementioned, the plaintiff is entitled to maintain this action against the defendants herein under the provisions of the Jones Act.

13. That the decedent, James Dean, suffered death in the course of his employment aboard the vessel aforementioned.

14. That on or about the 22nd day of December, 1949, the aforementioned vessel broke and parts thereof gave way and the vessel was otherwise rendered unsafe.

15. That the aforesaid occurrence was due to the negligence of the decedents, Sid Cox and H. C. Farrington, their agents, servants, and employees, in causing, allowing and permitting the vessel to undertake a voyage in a condition which unduly exposed the decedent, James Dean, to danger; and in causing, allowing and permitting the vessel to put to sea in a damaged, unsafe, and unseaworthy condition without any means or precautions taken to make the vessel staunch and seaworthy; and in addition to the foregoing, the decedents, Sid Cox and H. C. Farrington, their agents, servants, and employees were guilty of fault in failing to provide sufficient, adequate, and proper means, lifesaving appliances and appurtenances and safety devices for the [fol. 4] protection of the decedent, James Dean; and in failing, neglecting, and omitting to navigate the vessel and

take due precautions for the safety of the vessel and the decedent, James Dean; and the decedents, Sid Cox and H. C. Farrington, their agents, servants, and employees were at fault in failing, neglecting, and omitting to give the decendent reasonable opportunity to leave the vessel or provide him with safe and adequate life boats or other means wherewith to leave the vessel; and the decedents, Sid Cox and H. C. Farrington, their agents, servants, and employees were further at fault in that vessel was navigated in an unskillful, improper, careless, reckless, and negligent manner and not in accordance with the method and manner that would be considered good practice by the profession or trade, all of which resulted in the vessel breaking and parts thereof giving way and the decedent, James Dean, suffering death; and the decedents, Sid Cox and H. C. Farrington, their agents, servants, and employees were otherwise careless, reckless, and negligent in the premises.

16. That as a result of the accident aforementioned, the decendent, James Dean, suffered conscious pain, mental anguish and physical suffering from the time of the injury to the time of his death.

17. That the decedent, James Dean, died leaving heirs at law and next of kin on whose behalf this action is being brought.

18. That by reason of the foregoing, the estate, heirs at law and next of kin of James Dean sustained damages in the sum of One Hundred Thousand Dollars ($100,000). [fol. 5] Wherefore, Plaintiff demands trial by jury and judgment, jointly or severally, against the defendants, Henrietta A. Farrington and Howard C. Farrington and against the estate of Sid Cox in the sum of One Hundred Thousand Dollars ($100,000), together with the costs and disbursements of this action.

Rassner & Jennings, (S.) by Milton S. Jennings, Attorneys for Plaintiff.

550 Building, 550 Brickell Avenue, Miami, Florida.

In United States District Court

Motion of Defendants Bessie B. Cox and John G. Thompson as Administrators of the Estate of Sid Cox, Deceased, for Summary Judgment—Filed December 2, 1952

The Defendants, Bessie B. Cox and John G. Thompson, as administrators of the Estate of Sid Cox, deceased, by their undersigned attorney, hereby move the Court to enter Summary Judgment for the said defendants in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure, on the ground that the pleadings and the certificate of the clerk of the County Judges' Court, Dade County, Florida, hereto attached and marked Exhibit A, show that the defendants are entitled to Judgment as a matter of law, as no claim was filed by the Plaintiff in the Estate of Sid [fol. 6] Cox in the County Judges' Court, Dade County, Florida, within eight months from the date of the first publication of the notice to creditors in that estate, as required by Section 733.16, Florida Statutes.

Smathers, Thompson, Maxwell & Dyer, (S.) by Douglas D. Batchelor, Attorneys for Defendants, Bessie B. Cox and John G. Thompson, as Administrators of the Estate of Sid Cox, Deceased.

I hereby certify that a copy of the foregoing Motion for Summary Judgment was mailed to Rassner & Jennings, 550 Brickell Avenue, Miami, Florida, Attorneys for Plaintiff, this 2nd day of December, 1952.

(S.) Douglas D. Batchelor.

Exhibit A to Motion

Certificate

I, Gladys V. Sullivan, Clerk of the County Judges' Court, Dade County, Florida, do hereby certify that the records of this Court reveal that a Petition for Letter of Administration in the Estate of Sid Cox, deceased, were filed in this Court on the 11th day of January, 1951, and that on that date Letters of Administration were issued by the County

Judge to Bessie B. Cox and John G. Thompson; that the notice to creditors in the said Estate was first published on January 12, 1951; that no claims in the said Estate were filed [fol. 7] by Arthur Roth, as administrator of the Estate of James Dean, deceased, within the period of eight months immediately following the first publication of notice to creditors.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the County Judges' Court at Miami, Florida, this 2nd day of December, A. D., 1952.

(S.) Gladys V. Sullivan, Clerk County Judges' Court.
(Seal of County Judges' Court.)

Certificate

In United States District Court

Motion of Defendant, Howard C. Farrington, for Summary Judgment—Filed December 2, 1952

The Defendant, Howard C. Farrington, by and through his undersigned attorneys, hereby moves the Court to enter Summary Judgment for the said Defendant in accordance with the provisions of Rule 56 of the Federal Rules of Civil Procedure, on the ground that the pleadings and the certificate of the Clerk of the County Judges' Court, Dade County, Florida, hereto attached and marked Exhibit A., show that the Defendant is entitled to Judgment as a matter of law, as no claim was filed by the Plaintiff in the Estate of H. C. Farrington in the County Judges' Court, Dade [fol. 8] County, Florida, within eight months from the date of the first publication of the notice to creditors in that estate, as required by Section 733.16, Florida Statutes.

Smathers, Thompson, Maxwell & Dyer, (S.) by Douglas D. Batchelor, Attorneys for the Defendant, Howard C. Farrington.

I hereby certify that a copy of the foregoing Motion for Summary Judgment was mailed to Rassner & Jennings, 550 Brickell Avenue, Miami, Florida, Attorneys for Plaintiff, this 2 day of December, 1952.

(S.) Douglas D. Batchelor.

EXHIBIT A TO MOTION

I, Gladys V. Sullivan, Clerk of the County Judges' Court, Dade County, Florida, do hereby certify that the records of this Court reveal that a Petition for Letters of Administration in the Estate of H. C. Farrington, deceased, were filed in this Court on the 1st day of March, 1950, and that on that date Letters of Administration were issued by the County Judge to Henrietta A. Farrington; that the notice to creditors in the said Estate was first published on March 2, 1950; that no claims in the said Estate were filed by Arthur Roth, as Administrator of the Estate of James Dean, deceased, within the period of eight months immediately following the first publication of notice to creditors.

[fol. 9] In Witness Whereof, I have hereunto set my hand and affixed the seal of the County Judges' Court at Miami, Florida, this 2nd day of December, A. D., 1952.

(S.) Gladys V. Sullivan, Clerk, County Judges' Court.

(Seal of County Judges Court.)

IN UNITED STATES DISTRICT COURT

MOTION OF DEFENDANT, HENRIETTA A. FARRINGTON, FOR SUMMARY JUDGMENT—Filed December 2, 1952

The Defendant, Henrietta A. Farrington, by and through her undersigned attorneys, hereby moves the Court to enter Summary Judgement for the said Defendant in accordance with the provision of Rule 56 of the Federal Rules of Civil Procedure, on the ground that the pleadings and the certificate of the Clerk of the County Judges' Court, Dade County, Florida, hereto attached and marked Exhibit A, show that the Defendant is entitled to Judgment as a matter of law, as no claim was filed by the Plaintiff in the Estate of H. C. Farrington in the County Judges' Court, Dade County, Florida, within eight months from the date of the first publication of the notice to creditors in that estate, as required by Section 733.16, Florida Statutes.

Smathers, Thompson, Maxwell & Dyer, (S.) by Douglas D. Batchelor, Attorneys for the Defendant, Henrietta A. Farrington.

[fol. 10] I hereby certify that a copy of the foregoing Motion for Summary Judgment was mailed to Rassner & Jennings, 550 Brickell Avenue, Miami, Florida, Attorneys for Plaintiff, this 2nd day of December, 1952.

(S.) Douglas D. Batchelor.

EXHIBIT A—Omitted. Printed Side Page 8 Ante

[fol. 11] IN THE UNITED STATES DISTRICT COURT, SOUTHERN DISTRICT OF FLORIDA

[Title omitted]

ORDER GRANTING MOTIONS FOR SUMMARY JUDGMENTS—Filed December 8, 1952

This cause coming on to be heard upon the motion of the Defendants, Bessie B. Cox and John G. Thompson, as administrators of the Estate of Sid Cox, deceased, and upon the motion of Henrietta A. Farrington and Howard C. Farrington for Summary Judgments as to all of the above name Defendants, and the Court having heard the argument of counsel and being advised in the premises, it is upon consideration.

Ordered, Adjudged and Decreed that the said Motions for Summary Judgments be, and the same are hereby granted, and this cause be, and it is hereby dismissed as to the aforenamed Defendants without leave to amend.

[fol. 12] Done and Ordered at Miami, Florida, this 8th day of December, 1952.

(S.) John W. Holland, Chief Judge.

Bond on appeal for $250.00 filed December 24, 1952, omitted in printing.

[fol. 13] In United States District Court, Southern District of Florida

[Title omitted]

Notice of Appeal—Filed December 24, 1952

Notice is hereby given that Arthur Roth, as Administrator of the Estate of James Dean, deceased plaintiff, in the [fol. 14] above styled cause, hereby appeals to the United States Circuit Court of Appeals for the Fifth Circuit from the summary judgments entered in this cause on the 8th day of December, 1952, dismissing as defendants, Bessie B. Cox and John G. Thompson, as Administrators of the Estate of Sid Cox, deceased, and Henrietta A. Farrington and Howard C. Farrington.

Dated this 24th day of December, 1952.

Rassner & Jennings, (S.) by Milton S. Jennings, Attorneys for Plaintiff; 550 Building, 550 Brickell Avenue, Miami, Florida.

Certificate of service (omitted in printing).

In United States District Court

Appellant's Statement of Points on Appeal—Filed December 24, 1952

The Appellant, Arthur Roth, as Administrator of the Estate of James Dean, deceased, originally Plaintiff [fol. 15] in this cause intends to rely upon the following points on this appeal:

1. The Court erred in sustaining Defendants' Motions for Summary Judgments.

2. The Court erred in not overruling Defendants' Motion for Summary Judgments.

3. The Court erred in its construction of Section 733.16 of the Florida Statutes.

Rassner & Jennings, (S.) by Milton S. Jennings, Attorneys for Appellant; 550 Building, 550 Brickell Avenue, Miami, Florida.

Proof of service (omitted in printing).

[fols. 16-17] Designation of Record, (omitted in printing)

[fol. 18] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 19] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14,419

ARTHUR ROTH, as Administrator of the Estate of JAMES DEAN, Deceased,

versus

BESSIE B. COX, and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, deceased, ET AL.

Minute Entry of Argument and Submission, dated October 19, 1953, omitted in printing

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[fol. 20] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14,419

ARTHUR ROTH, as Administrator of the Estate of JAMES DEAN, deceased, Appellant,

versus

BESSIE B. COX, and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, deceased, ET AL., Appellees.

Appeal from the United States District Court for the Southern District of Florida.

Opinion—Filed January 15, 1954.

Before HUTCHESON, Chief Judge, and HOLMES, and BORAH, Circuit Judges.

BORAH, Circuit Judge: On December 22, 1949, the motor vessel Wingate owned by Sid Cox and H. G. Farrington and others sailed from Matanzas, Cuba, and when off the coast [fol. 21] and on the high seas foundered with complete loss of life, including H. C. Farrington, her master, and James Dean, a seaman. In January, 1951, Sid Cox died and

thereafter, in the month of October, 1952, plaintiff, as administrator of the estate of James Dean, brought this action under the Jones Act, 46 U.S.C.A. §688, against the administrators of the estate of Sid Cox and the distributees of the estate of H. C. Farrington. The defendants thereupon filed motions for summary judgment on the ground that plaintiff had not filed with the County Judge of Dade County, Florida—the court having jurisdiction of the probate proceedings in both the Cox and Farrington estates—his notices of claim within eight months from the respective dates of the first publication of notices to creditors as required by F.S.A. 733.16.[1] The District Judge thought that the defendants were entitled to a judgment as a matter of law, by reason of plaintiff's admitted failure to comply with the notice of claim provision of the Florida probate

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[1] Florida Statutes Annotated, Sec. 733.16(1), provides:

"No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and postoffice address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom such claim may be made, whether suit be pending at he time of the death of such person or not, unless such claim be filed in the manner and within the said eight months as aforesaid; * * *"

act and he granted the motions and dismissed the action.

Appealing from this order plaintiff-appellant contends that the statute in question is a statute of limitation; that [fol. 22] its requirements with respect to the filing of a claim within eight months are inconsistent with and impair the uniform operation of the maritime law and accordingly are not applicable to a suit under the Jones Act which provides a limitation of three years. The appellees on the other hand insist that the Florida nonclaim statute while partaking of the nature of a statute of limitations is not solely such; that the statute was enacted as a part of the probate law not primarily for the purpose of barring state claims, but as a part of the procedure which courts must observe in the orderly, expeditious and exact settlement of estates of deceased persons; and that the statute does not disturb the uniformity of law in the maritime field and in no way encroaches upon the rights granted to plaintiff by the Jones Act.

The Jones Act, 46 U.S.C.A. §688, provides that a seaman suffering injury "in the course of his employment may, at his election, maintain an action for damages at law, * * * and in such action all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply; and in cases of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law * * * and in such action all statutes of the United States conferring or regulating the rights of action for death in the case of railway employees shall be applicable." The section is specifically drawn to give rights to employees against employers and against no others. It [fol. 23] refers to injuries sustained in the course of "his" (seaman's) employment. It says that "Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principal office is located." Title 45, U.S.C.A. §51 also refers to actions between employer and employee. Thus, there is nothing in the Jones Act which grants to seamen a right to bring an action against anyone except his employer and as the Act does not in terms provide for survival of actions against the estate of the deceased tort-feasor we are

unwilling as in *Nordquist* v. *United States Trust Co. of New York*, 2 Cir., 188 F. 2d 776,[2] to supply what the Congress omitted by reading a survival proviso into the statute where no legislative intent therefor is discoverable. If the law is to be changed it ought to be by an Act of Congress.

In the absence of some specific provision as to the survivability of the causes of action which the statute authorizes the statute must be measured in the light of the common law rule of survival. By the ninth section of the Judiciary Act of 1789 the District Courts of the United States were given exclusive original cognizance of all civil cases of admiralty and maritime jurisdiction, "saving to suitors, in all cases, the right of a common-law remedy where the common law is competent to give it." This provision was carried forward into the 1948 revision of the Judicial Code, 28 U.S.C.A. §1333, and the language of the saving clause has been changed somewhat in phraseology though not in intent, as the reviser's note makes clear. [fol. 24] In *The Moses Taylor*, 4 Wall 411, 18 L. Ed. 397, the Court in determining whether the case before it was within the saving clause said: "That clause only saves to suitors, 'the right of a common-law remedy, where the common law is competent to give it.' It is not a remedy in the common-law courts which is saved, but a common-law remedy." The saving clause neither creates substantive rights in itself nor assents to their creation by the state. It refers only to remedies and to the extent specified permits continued enforcement by the state courts of rights and obligations founded on maritime law. *Knickerbocker Ice Co.* v. *Stewart*, 253 U. S. 149, 40 S. Ct. 438, 64 L. Ed. 834. Thus, in *Chelentis* v. *Luckenbach S. S. Co., Inc.*, 247 U. S. 372, 384, 38 S. Ct. 501, 504, 62 L. Ed. 1171, it was said, "under the saving clause a right sanctioned by the maritime law may be enforced through any appropriate remedy recognized at common law; but we find nothing therein which reveals an intention to give the complaining party an election to de-

[2] In this case the court expressly overruled its former opinion in *The Miramar*, D. C., 31 F. 2d 767, affirmed without opinion 2 Cir., 36 F. 2d 1021, certiorari denied 281 U. S. 752, 50 S. Ct. 355, 74 L. Ed. 1163.

termine whether the defendant's liability shall be measured by common-law standards rather than those of the maritime law." It follows that state Legislatures are competent to enact survival statutes which may be enforced as a common-law remedy. While it may be true that admiralty may not enforce the remedy, even by libel in personam, yet it is not an encroachment on admiralty jurisdiction because it is expected from that jurisdiction by the savings clause. Under the common law of Florida as modified by the statutes of the state a cause of action for a tort survives the death of the tort-feasor and may be maintained against his personal representative.[3]

[fol. 25] This brings us to the question whether this suit brought on the common law side of the District Court to enforce a right of action granted by the Jones Act may be commenced within three years after the cause of action accrues, or whether the Florida statute of nonclaim fixing a shorter period of limitation will apply. Section 56 of the Employers' Liability Act[4] provides that "no action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued." This provision which was incorporated by adoption in the Jones Act is one of substantive right, setting a limit to the existence of the obligation which the Act creates. *Atlantic Coast Line R. R.* v. *Burnette*, 239 U. S. 199, 201. And it necessarily implies that the action was maintainable as a substantive right, if commenced within three years. Referring to the Jones Act and its proper construction the Supreme Court in *Panama R. R. Co.* v. *Johnson*, 264 U. S. 375, 392, said: "The statute extends territorially as far as Congress can make it go, and there is nothing in it to cause its operation to be otherwise than uniform. The national legislation respecting injuries to railway employees engaged in interstate and foreign commerce which it adopts has a uniform operation, and neither is nor can be deflected therefrom by local statutes or local views of common law rules. *Second Employers' Liability Cases*, 223 U. S. 1, 51, 55; *Baltimore & Ohio R. R. Co.* v. *Baugh*, 149

[3] Waller v. First Savings & Trust Co., 1931, 103 Fla. 1025, 138 So. 780; F.S.A. 45.11.

[4] 45 U.S.C.A. § 56.

U. S. 368, 378." In *Engel* v. *Davenport*, 271 U. S. 33, 39, a suit founded on the Jones Act was brought in the state court and the contention there made was that §6 of the Employers' Liability Act [5] does not determine the period of [fol. 26] time within which an action may be commenced in the state court. In answering this contention the Court said: "We conclude that the provision of § 6 of the Employers' Liability Act relating to the time of commencing the action, is a material provision of the statutes 'modifying or extending the common law right or remedy in cases of personal injuries to railway employees' which was adopted by and incorporated in the Merchant Marine Act. And, as a provision affecting the substantive right created by Congress in the exercise of its paramount authority in reference to the maritime law, it must control in an action, brought in a state court under the Merchant Marine Act, regardless of any statute of limitations of the State. See *Arnson* v. *Murphy*, 109 U. S. 238, 243." We take it to be now well settled that when a common law action is brought, whether in a federal or in a state court, to enforce a right peculiar to the law of admiralty, the substantive law to be applied is the same as would be applied by an admiralty court. *Chelentis* v. *Luckenbach S. S. Co., Inc., supra; Carlisle Packing Co.* v. *Sandanger*, 259 U. S. 255, 42 S. Ct. 475, 66 L. Ed. 927; *Engel* v. *Davenport*, 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813; *Panama R. R. Co.* v. *Vasquez*, 271 U. S. 557, 46 S. Ct. 596, 70 L. Ed. 1085; *Lindgren* v. *United States*, 281 U. S. 38, 46, 50 S. Ct. 207, 211, 74 L. Ed. 686; *Garrett* v. *Moore-McCormick Co., Inc.*, 317 U. S. 239, 63 S. Ct. 246, 87 L. Ed. 249; *Seas Shipping Co., Inc.*, v. *Sieracki*, 328 U. S. 85, 66 S. Ct. 872, 90 L. Ed. 1099.

In *Lindgren* v. *United States*, *supra*, the court made these pertinent observations in reference to the Jones Act. It "establishes as a modification of the prior maritime law a rule of general application in reference to the liability of [fol. 27] owners of vessels for injuries to seamen extending territorially as far as Congress can make it go; that this operates uniformly within all of the States * * *; and

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[5] This provision as amended was carried forward into 45 U.S.C.A. §56.

that as it covers the entire field of liability for injuries to seamen, it is paramount and exclusive, and supersedes the operation of all state statutes dealing with that subject."

In the light of the authorities we hold that the provision of Section 56 of the Employers' Liability Act relating to the time of commencing the action is one of substantive right, setting a limit to the existence of the obligation, which the Act creates and it may not be deflected or impaired by the Florida nonclaim statute. *Pope & Talbot, Inc.* v. *Charles Haen and Haenn Ship Ceiling and Refitting Corporation*, Supreme Court of United States, December 7, 1953, No. 13—October Term, 1953; *Frame* v. *City of New York*, D. C., 34 F. Supp. 194; *The West Point*, D. C., 71 F. Supp. 206.

The judgment of the District Court is reversed, and the cause remanded for further proceedings not inconsistent with this opinion.

Reversed and remanded.

HUTCHESON, Chief Judge, Dissenting:

I go along with the majority through page five of the opinion. I part company with them thereafter, and the reason I do is because the opinion, in dealing with the binding force of the three year period of limitation fixed [fol. 28]in and by the Jones Act as to actions brought under it assumes that the right of action sued on in this suit is afforded by that act, when the exact contrary of this is thus carefully pointed out earlier in the opinion. Saying, "Thus there is nothing in the Jones Act which grants to seamen a right of action against anyone except his employer and as the act does not in terms provide for survival of actions against the estate of the deceased tort-feasor," the majority then goes on to say, "we are unwilling as in *Nordquist* v. *United States Trust Co. of New York*, 188 F(2) 776, so supply what the congress omitted by reading a survival proviso into the statute where no legislative intent therefor is discoverable. If the law is to be changed it ought to be by an Act of Congress."

Notwithstanding this express and vigorous holding that the Jones Act does not grant to the seaman in this case a right to bring the action brought here, and that the action is afforded by the Statutes of Florida, the opinion

goes on to say: "This brings us to the question whether this suit brought on the common law side of the District Court *to enforce a right of action granted by the Jones Act* (emphasis supplied by me) may be commenced within three years after the cause of action accrues, or whether the Florida statute of nonclaim * * * will apply".

With deference, this assumption that the suit is brought to enforce a right of action granted by the Jones Act is contrary to the fact and law of the case, and throws the whole case out of focus by presenting as the question for decision a question that is not here for decision. What is for decision here is this: May the representative of a [fol. 29] seaman, who has elected to sue at law upon a cause of action, the creature of a state statute, take so much of the state law as he likes and reject so much of it as he does not like, or must he take the statutory cause of action *cum onere*, the bitter with the sweet.

I think it has been precisely and many times decided that he must so take it. This was decided in the Harrisburg case, 119 U. S. 214, and in *Western Fuel Co.* v. *Garcia*, 257 U. S. 233, and that case has been uniformly followed and never departed from. As late as in *Levinson* v. *Deupree*, 345, U. S. 651, the Supreme Court reaffirmed the principle while in *Continental* v. *Benny Skou*, 200 F(2) 250, there is an excellent discussion of it, Cf. *Caldarola* v. *Eckert*, 332 U. S. 155, *Engel* v. *Davenport*, 271 U. S. 38, and *Lindgren* v. *United States*, 281 U. S. 38, are correctly cited by the majority as holding that the Jones Act covers the entire field of liability for injuries to seamen as congress has there laid it down. Indeed Lindgren applied the rule so rigidly that it rejected the application of the Virginia death statute on the ground that the Jones Act was complete and comprehensive, and since, under the circumstances of that case, it did not afford a right of action, state law could not be looked to to supplement its coverage.

In *Just* v. *Chambers*, 312 U. S. 583, the Supreme Court of the United States rejected the view of the majority of this court, 113 F(2) 106, that since the action there sought to be maintained was not afforded by the Jones Act, resort could not be had to the action afforded by the Florida State Statutes in favor of the view of the minority, 113 F(2) at 10, that it could be, and there laid down the rule

applicable and controlling here. This is that, though no [fol. 30] right of action was afforded under federal law, the seaman was permitted to sue under the State Act, and the suit was not in breach of the uniformity required in admiralty. Thus reaffirming the rule that, though no action was afforded in admiralty, the State Court action for death could be resorted to by a seaman's representative.

The majority has correctly, I think, held that the Jones Act does not afford the right of action asserted the State Statutes do. If the action sued on is that afforded by the State, then it must be taken *cum onere*, and it may not, I think, be held, as the majority opinion does, that though the Jones Act does not afford the action and the State Statute does, the representative of a seaman suing under the State Action is in a different situation from an ordinary litigant in Florida, in this, that whereas the statute invoked in this case would certainly be valid as to, and a bar against, such a litigant, it would not be as to the plaintiff because his action was brought for the benefit of a seaman. To my mind, reason and authority join in rejecting this view. I respectfully dissent.

[fol. 31] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14,419

ARTHUR ROTH, as Administrator of the Estate of JAMES DEAN, deceased,

versus

BESSIE B. COX, and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, deceased, et al.

JUDGMENT—January 15, 1954

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

On consideration whereof, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, re-

versed; and that said cause be, and it is hereby, remanded to the said District Court for further proceedings not inconsistent with the opinion of this Court;

It is further ordered and adjudged that the appellees, Bessie B. Cox, and John G. Thompson, as Administrators of the Estate of Sid Cox, deceased, and Others, be condemned, in solido, to pay the costs of this cause in this Court for which execution may be issued out of the said District Court.

"Hutcheson, Chief Judge, dissents."

[fols. 29-32] Petition for rehearing covering 4 pages filed February 2, 1954 omitted from this print, it was denied, and nothing more by order February 5, 1954.

[fols. 33-34] IN THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

No. 14,419

[Title omitted]

ORDER DENYING REHEARING—February 5th, 1954

It is ordered by the Court that the petition for rehearing filed in this cause be, and the same is hereby, denied.

"Hutcheson, Chief Judge, dissents."

[fols. 35-36] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 37] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 691

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of SID COX, Deceased, et al., Petitioners,

vs.

ARTHUR ROTH, as Administrator of the Estate of JAMES DEAN, Deceased

ORDER ALLOWING CERTIORARI—Filed June 7, 1954

The petition herein for a writ of certiorari to the United States Court of Appeals for the Fifth Circuit is granted.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to to such writ.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

No. 440

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON; and HOWARD C. FARRINGTON,

Petitioners,

—vs—

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

DOUGLAS D. BATCHELOR
DAVID W. DYER
Advocates

SMATHERS, THOMPSON, MAXWELL & DYER
Attorneys for Petitioners

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1953

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON; and HOWARD C. FARRINGTON,

Petitioners,

—vs—

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

TO THE HONORABLE CHIEF JUSTICE AND ASSOCIATE JUSTICES OF THE SUPREME COURT OF THE UNITED STATES.

Your Petitioners, BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased;

HENRIETTA A. FARRINGTON; and HOWARD C. FARRINGTON, pray that a Writ of Certiorari issue to review the decision of the United States Court of Appeals for the Fifth Circuit rendered on January 15, 1954 (Rehearing Denied, February 5, 1954), reversing a Summary Judgment of Dismissal of the District Court for Southern Florida, filed December 8, 1952. (R. 11.)

JURISDICTION

Jurisdiction to review this case is based on 28 U. S. Code, Sec. 1254 (1). The opinion below was filed January 15, 1954, and rehearing was denied February 5, 1954. (R. 36.)

SUMMARY STATEMENT

In December, 1949, the M/V "WINGATE", of Honduran registry, sailed from Matanzas, Cuba. Several days later, the bodies of the Master and part owner, H. C. FARRINGTON, and of one other crew member were washed ashore on the Cuban coast. No word has ever been received from the vessel and her wreckage, if any there be, has never been found. At the time of her disappearance, the "WINGATE" was owned by H. C. FARRINGTON, SID COX, and another, all residents of Florida.

The Respondent Administrator brought this action in October, 1952, alleging that his intestate was a member of the crew of the "WINGATE". He brings this suit under the provisions of Sec. 33 of the Merchant Marine Act of 1920; 41 Stat. 988, c. 25[illegible] 46 U. S. Code, Sec. 688, (commonly referred to as the Jones Act) to recover for his intestate's alleged death. The Defendants are the administrators of

the Estate of SID COX, who died in 1950, and HOWARD C. FARRINGTON and HENRIETTA A. FARRINGTON, as distributees of the Estate of H. C. FARRINGTON. The Estate of CAPT. FARRINGTON was probated and the administratrix was discharged prior to the filing of this cause. No notice of claim was filed by the Plaintiff in either Estate within eight months from the publication of the first Notices to Creditors, as is required by Sec. 733.16 (1), Fla. Stat.

Two other suits of a similar nature arising out of the disappearance of the "WINGATE" have also been filed. The Defendants filed Motions for Summary Judgment in all actions. The District Court granted the motions in this case. Final determination of the other two suits has been held in abeyance pending the outcome of the appeal and petition for Writ of Certiorari in this case.

THE DECISION BELOW

The District Court, without opinion, granted the motions for Summary Judgment (R. 11) and dismissed the Complaint.

The Court of Appeals held that even though the Jones Act did not create a cause of action in the Plaintiff, since it did not provide for the survivorship of claims against deceased tort feasors, the laws of Florida did permit the survivorship of such causes of action. Upon the strength of this reasoning, it then held that claims under the Jones Act against estates administered in Florida were not governed by the Florida Non-Claim Statute, Sec. 733.16 (1), Fla. Stat., and that the Plaintiff could maintain this action even though

no claim had been filed within the time provided by that statute. The judgment of the District Court was, accordingly, reversed (R. 20).

Hutcheson, C. J., dissented (R. 27).

STATUTES INVOLVED

Sec. 33 of the Merchant Marine Act of 1920; 41 Stat. 988, c. 250; 46 U. S. Code, Sec. 688.

Amendment 10 to the United States Constitution Sec. 733.16 (1), Fla. Statutes (See Appendix for text).

QUESTIONS PRESENTED

1. Where a foreign flag vessel is lost upon the high seas and beyond the territorial jurisdiction of the forum, is not the question of the survivorship of a cause of action founded upon such loss against a deceased tort feasor to be determined by the Maritime Law rather than by the law of the forum?

2. If the law of the forum as to survivorship of actions is to apply, must not the plaintiff (in a Jones Act case) comply with all of the applicable laws of that forum, including specifically the requirement that notice of such claim must be filed in estate proceedings within a specified time?

3. Does not the tenth amendment to the United States Constitution reserve to the states the exclusive power to govern the administration and distribution of the estates of decedents, and does not the decision of the Court of Appeals

in ignoring the non-claim section of the Florida probate law do violence to that amendment by permitting a Federal law, the Jones Act, to interfere with the administration of decedents' estates?

REASONS FOR ALLOWANCE OF THE WRIT

I.

THE DECISION BELOW IS IN CONFLICT WITH THE APPLICABLE DECISIONS OF THIS COURT AND OF OTHER COURTS OF APPEAL.

QUESTION 1.

Where a foreign flag vessel is lost upon the high seas and beyond the territorial jurisdiction of the forum, is not the question of the survivorship of a cause of action founded upon such loss against a deceased tort feasor to be determined by the Maritime Law rather than by the law of the forum?

This action is against the administrators and distributees of the Estates of two deceased boat owners, and it is founded solely upon the Jones Act. The Court of Appeals clearly recognized that the Jones Act did not confer upon the Plaintiff a right of action against the representatives of such deceased tort feasors. That Court then held that whether or not there was a right of survivorship must, therefore, be determined by the common law. It was then found that under the common law of Florida, the state of the forum, such an action would survive as against these defendants. In reaching a conclusion as to the survivorship of this cause

of action, the Court below either overlooked or completely ignored the basic doctrine that the survivorship of actions against deceased tort feasors is a part of the **substantive** law of the case, and must be governed by the lex loci delicti commissi — not by the lex fori. In this respect the decision below is clearly in conflict with the decision of this Court in **Ormsby v. Chase,** 290 U. S. 387, 54 S. Ct. 211, 78 L. Ed. 378. In that case, an action was brought against the executor in Pennsylvania on a tort committed by the deceased in New York. While Pennsylvania recognized the survivorship of actions against deceased tort feasors, New York did not. In denying the claim, this Court said:

> "But the law of the place of the wrong determines whether the claim for damages survives the death of the wrongdoer"
>
> and
>
> "She (the Plaintiff) could derive no substantive rights from the Pennsylvania survival statute."

As the alleged death occurred on board a foreign flag vessel on the high seas, and not within the territorial waters of the State of Florida, the Court of Appeals should have looked to the maritime law—not the Florida law—to determine the survivorship of this action against these deceased tort feasors.

This is not the same case as was presented to this Court in **Just v. Chambers,** 312 U. S. 383, 61 S. Ct. 687, 85 L. Ed. 903. There, the accident occurred within Florida territorial waters and this Court held that the cause would,

therefore, survive under the Florida law. Here, such accident occurred outside of the state's territorial waters. It must, therefore, be governed by the general maritime law. Decisions there found all indicate that under maritime law there is no such survivorship. **Chambers v. Just,** 113 F. (2d) 105, (reversed on other grounds, 312 U. S. 383); **Crapo v. Allen,** Fed. Cases, No. 3360; **in re Statler,** 31 F. (2d) 767; see also note 4 to Mr. Justice Hughes opinion in **Just v. Chambers,** supra.

QUESTION 2.

If the law of the forum as to survivorship of actions is to apply, must not the plaintiff (in a Jones Act case) comply with all of the applicable laws of that forum, including specifically the requirement that notice of such claim must be filed in estate proceedings within a specified time?

The decision below, in finding a cause of action for the respondent, departs from those of this court in still another instance. As before mentioned, the Court of Appeals based the Respondent's right upon the survivorship provision of the Florida law. Yet, that Court refused to apply the other provisions of the Florida law relative to the manner in which such claims must be presented. Specifically, it failed to recognize the section which requires a notice of such claim to be filed in the probate proceedings within eight months from the first publication of notice to creditors, Sec. 733.16 (1) Fla. Stat. This section further provides that any claim not so filed shall be **void.**

We do not believe that the respondent may accept the benefit of those parts of the law of Florida which suit him,

while ignoring the companion parts of the law which bar his claim. But this is exactly what the Court below has held. Again, the decision is in clear conflict with prior decisions of this Court. **The Harrisburg,** 119 U. S. 199, 7 S. Ct. 140, 30 L. Ed. 358; **Western Fuel Co. v. Garcia,** 257 U. S. 233, 42 S. Ct. 89, 66 L. Ed. 210; **Levinson v. Deupree,** 345 U. S. 648, 73 S. Ct. 914, 97 L. Ed. 1319. It is also contrary to the recent decision of the Fourth Circuit in **Continental Casualty Co. v. The Benny Skou,** 200 F. (2d) 246.

In **The Harrisburg,** supra, it was held that where an action is founded upon a right granted by a state, the time within which suit may be brought acts as a limitation upon such right. In **Continental Casualty Co. v. The Benny Skou,** the Fourth Circuit said:

> "Virginia has bestowed upon admiralty a right to grant recovery not previously possessed by admiralty. The endowment must be taken cum onere. As Appellant grounds his action upon the Virginia Statute, he is obliged to accept the statute in its entirety as construed by the Virginia court of last resort."

Certainly, the decision below violates these principles.

II.

THE DECISION BELOW CONSTITUTES A VIOLATION OF THE TENTH AMENDMENT OF THE UNITED STATES CONSTITUTION, AND DECIDES AN IMPORTANT QUESTION OF LOCAL LAW CONTRARY TO THE APPLICABLE DECISIONS OF THIS COURT AND OF STATE COURTS.

QUESTION 3.

Does not the tenth amendment to the United States Constitution reserve to the states the exclusive power to govern the administration and distribution of the estates of decedents, and does not the decision of the Court of Appeals in ignoring the non-claim section of the Florida probate law do violence to that amendment by permitting a federal law, the Jones Act, to interfere with the administration of decedents' estates?

The Statute of Limitations under the Jones Act is three years. Admittedly, no state may impose any shorter limitations upon that right. **Engle v. Davenport,** 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813. But what effect does that right have upon the probate laws of the States? Can the Jones Act invade the probate field and, in effect, nullify and disrupt the administration of estates under the applicable state laws? The decision of the Court of Appeals holds that it can. This view, we contend, is an unconstitutional invasion by the federal law of those powers reserved to the states by the Tenth Amendment.

The settlement and distribution of decedents' estates has always been considered to rest wholly within the power of the states. In **Harris v. Zion Savings Bank and Trust Company,** 317 U. S. 447, 63 S. Ct. 357, 87 L. Ed. 390, a case involving a conflict between the Bankruptcy Act and the Utah probate law, this Court held:

"When we reflect that the settlement and distribution of decedents' estates and the right to succeed to the

ownership of realty and personalty are peculiarly matters of state law; that the federal courts have no probate jurisdiction and have sedulously refrained even in diversity cases from interfering with the operations of state tribunals invested with that jurisdiction, we naturally incline to a construction of Sec. 75, consistent with these principles. We think the beneficial purpose of the legislation will not be defeated by such a construction."

The Tenth Circuit had previously said in that case:

"Federal courts have no probate jurisdiction. Power to administer estates resides entirely with the states." **Harris v. Zion Savings Bank and Trust Company,** 127 F. (2d) 1012.

In **Cope v. Cope,** 137 U. S. 682, 11 S. Ct. 222, 34 L. Ed. 832, the same conclusion was reached. That case involved the powers of the Utah Territorial Legislature. This Court found that such powers, except as limited by the Territorial Government Act, were as plenary as those of a state legislature, and then said:

"The distribution of and the right of succession to estates of deceased persons are matters exclusively of state cognizance, and are such as were within the competence of the territorial Legislature to deal with as it saw fit. . . ."

The above decisions are in full accord with that of the Supreme Judicial Court of Massachusetts in **Petition of Worcester County National Bank,** 263 Mass. 217, 162 N. E. 217.

In considering a conflict between the National Banking Act and the Massachusetts probate law, that court ruled:

> "It seems to us not open to debate that the general subject of the settlement of estates of deceased persons and the appointment of fiduciaries to administer trusts is within the exclusive jurisdiction of the state. No clause of the Constitution of the United States confers any such power upon the Congress, Art. 1, Sec. 8. That power is not forbidden to the states, Art. 1, Sec. 10. It is made purely of state rather than national cognizance. It falls among the powers reserved to the states by Article 10 of the Amendments."

While the "WINGATE'S" owners were alive, the Federal acts, under the maritime power granted to the Federal government by the Constitution, had full power to prescribe the nature and duration of their liability to the respondent. When they passed away the administration of their estates became, under the reservation contained in the Tenth Amendment, solely a matter to be determined and governed by the law of Florida. Any conflict between the Federal maritime laws and the Florida probate laws concerning the administration of Florida estates must be resolved in favor of the probate laws. Such was the ruling of this Court in the Harris case, supra, with respect to conflicts between bankruptcy and probate laws. And such was the ruling of the Massachusetts court in the Worcester National Bank case, supra, with respect to conflicts between banking and probate laws. The Federal government's power to enact bankruptcy, banking and maritime laws is co-extensive.

Principles of conflict applicable to one of these fields must be applicable to all.

No logical or legal reason can be found to support the law announced by the Court below to the effect that seamen need not be governed in the presentation of a claim against an estate by the same laws which apply to all other claimants. Not only does this constitute an invasion of the state's exclusive power to regulate the administration of estates, it amounts to a complete nullification of that power. No better example of this can be found than the present situation of the petitioners HOWARD C. FARRINGTON and HENRIETTA A. FARRINGTON. The estate of CAPTAIN FARRINGTON was completely and finally administered under the laws of the State of Florida and distribution of its assets was made to these petitioners many, many months prior to the time that the respondent filed this suit. If the respondent is successful here, that administration is completely frustrated and held for naught.

The prior decisions of this Court certainly do not allow such an invasion of the States authority over the administration of decedent's estates.

CONCLUSION

For the reasons set forth above, we respectfully submit that this Court should issue its Writ of Certiorari in this cause.

Respectfully submitted,

DOUGLAS D. BATCHELOR

DAVID W. DYER

By_____

Advocates

SMATHERS, THOMPSON, MAXWELL & DYER
1301 DuPont Building
Miami 32, Florida
Attorneys for Petitioners

APPENDIX

Section 733.16 (1), Florida Statutes.

Form and manner of presenting claims: limitation

"(1) No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and postoffice address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within the eight months from the time of the first publication of the notice to creditors shall be void even though the personal representative has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom such claim may be made, whether suit be pending at the time of death of such person or not, unless such claim be filed in the manner and within the said eight months as aforesaid;"

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 40

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

—vs—

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

BRIEF OF PETITIONERS

DOUGLAS D. BATCHELOR
DAVID W. DYER
Attorneys for Petitioners
1301 duPont Building
Miami, Florida

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1954

No. 40

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

—vs—

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

BRIEF OF PETITIONERS

The opinion below of the Court of Appeals for the Fifth Circuit is reported at 210 Fed. (2d) 76. No opinion was written by the District Court.

JURISDICTION

Jurisdiction of this Court to review this case is based on 28 U. S. Code, Section 1254 (1). The opinion below was

filed January 15, 1954, and rehearing was denied February 5, 1954, (R. 36). A Petition for Writ of Certiorari was filed in this Court on April 16, 1954, and the Petition was granted on June 7, 1954.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

United States Constitution, Amendment X.

> "The powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people."

Section 33 of the Merchant Marine Act of 1920, 41 Stat. 988, c. 250; 46 U. S. Code, Sec. 688.

> "Any seaman who shall suffer personal injury in the course of his employment may, at his election, maintain an action for damages at law, with the right of trial by jury, and in such action all statutes of the United States modifying or extending the common-law right of remedy in cases of personal injury to railway employees shall apply; and in case of the death of any seaman as a result of any such personal injury the personal representative of such seaman may maintain an action for damages at law with the right of trial by jury, and in such action all statutes of the United States conferring or regulating the right of action for death in the case of railway employees shall be applicable. Jurisdiction in such actions shall be under the court of the district in which the defendant employer resides or in which his principle office is located."

Section 733.16 (1), Florida Statutes; ch. 23970, Laws of Florida, 1947.

"(1) No claim or demand, whether due or not, direct or contingent, liquidated or unliquidated, or claim for personal property in the possession of the personal representative or for damages, including but not limited to actions founded upon fraud or other wrongful act or commission of the decedent, shall be valid or binding upon an estate, or upon the personal representative thereof, or upon any heir, legatee or devisee of the decedent unless the same shall be in writing and contain the place of residence and post office address of the claimant, and shall be sworn to by the claimant, his agent or attorney, and be filed in the office of the county judge granting letters. Any such claim or demand not so filed within the eight months from the time of the first publication of the notice to creditors shall be void even though the personal representaitve has recognized such claim or demand by paying a portion thereof or interest thereon or otherwise; and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or omission, shall survive the death of the person against whom such claim may be made, whether suit be pending at the time of death of such person or not, unless such claim be filed in the manner and within the said eight months as aforesaid;"

QUESTIONS PRESENTED

1. WHEN A FOREIGN-FLAG VESSEL IS LOST UPON THE HIGH SEAS AND BEYOND THE TERRITORIAL JURISDIC-

TION OF THE FORUM, IS NOT THE QUESTION OF THE SURVIVAL OF A TORT CLAIM AGAINST THE DECEASED VESSEL OWNERS, WHICH IS FOUNDED UPON SUCH LOSS, DETERMINED BY THE MARITIME LAW RATHER THAN BY THE LAW OF THE FORUM?

2. IF THE LAW OF THE FORUM AS TO SURVIVAL OF ACTIONS IS TO APPLY, MUST NOT THE PLAINTIFF (IN A JONES ACT CASE) COMPLY WITH ALL OF THE APPLICABLE LAWS OF THAT FORUM, INCLUDING SPECIFICALLY THE REQUIREMENT THAT NOTICE OF SUCH CLAIM MUST BE FILED IN ESTATE PROCEEDINGS WITHIN A SPECIFIED TIME?

3. DOES NOT THE TENTH AMENDMENT TO THE UNITED STATES CONSTITUTION RESERVE TO THE STATES THE EXCLUSIVE POWER TO GOVERN THE ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF DECEDENTS, AND DOES NOT THE DECISION OF THE COURT OF APPEALS IN IGNORING THE NON-CLAIM SECTION OF THE FLORIDA PROBATE LAW DO VIOLENCE TO THAT AMENDMENT BY PERMITTING A FEDERAL LAW, THE JONES ACT, TO INTERFERE WITH THE ADMINISTRATION OF DECEDENTS' ESTATE?

STATEMENT OF THE CASE

In December, 1949, the M/V "WINGATE", of Honduran registry, sailed from Matanzas, Cuba. Several days later, the bodies of the Master and part owner, H. C. FARRINGTON, and of one other crew member were washed ashore on the Cuban coast. No word has ever been received from the vessel, and her wreckage, if any there be, has never

been found. At the time of her disappearance, the "WINGATE" was owned by H. C. FARRINGTON, SID COX, and another, all residents of Florida.

The Respondent Administrator brought this action in the District Court for Southern Florida in October, 1952, alleging that his intestate was a member of the crew of the "WINGATE". The suit was brought under the provisions of Sec. 33 of the Merchant Marine Act of 1920; 41 Stat. 988, c. 255; 46 U. S. Code, Sec. 688, commonly referred to as the Jones Act, to recover for the alleged death of such crew member. The Defendants are the administrators of the estate of SID COX, who died in 1950, and HOWARD C. FARRINGTON and HENRIETTA A. FARRINGTON, as distributees of the estate of H. C. FARRINGTON. The estate of Captain FARRINGTON was probated and the administratrix was discharged prior to the filing of this cause. No notice of claim was filed by the Plaintiff in either estate within eight months from the publication of the first Notices to Creditors, as is required by Sec. 733.16 (1), Fla. Stat.

The Petitioners filed Motions for a Summary Judgment. These Motions were granted by the District Judge without opinion. (R. 11). On an Appeal taken by the Respondent, the Court of Appeals reversed the District Court, holding that even though the Jones Act did not create a cause of action in the Respondent, since there is no provision in that act for the survival of actions against deceased tort-feasors, the Law of Florida did permit the survival of such actions. Upon the strength of this reasoning, the Court of Appeals then held that suits under the Jones Act against estates administered in Florida were not governed by the Florida non-

claim statute and that the District Court could entertain this action even though no claim had been filed against the estates within the time required under the Florida probate law. (R. 20). Hutcheson, Chief Judge, dissented, (R. 27).

SUMMARY OF ARGUMENT

POINT 1.

As the Jones Act does not provide for the survival of actions against deceased tort-feasors, we must look to the lex loci delicti commissi, not the lex fori, to determine whether the cause of action will survive. The alleged wrong having occurred upon the high seas, and not within the territorial jurisdiction of any state or country, resort must be had to the general maritime law. Under that law it has been established that tort actions do not survive the death of the wrong doer.

POINT 2.

Assuming, however, that the law of the forum (Florida) is applicable and that the Respondent's cause survives by virtue of that law, the Respondent must accept all of the pertinent law of Florida and not merely those parts which suit his convenience. Under the law of Florida, no claim survives unless a notice is timely filed in the estate proceedings, and no such notice was here filed. If the law of Florida is to be relied upon by the Respondent, the rights granted by that law must be taken **cum onere,** and the failure of the Respondent to comply with the notice of claim provision constitutes a bar to this suit.

POINT 3.

The eight-month notice of claim provision of the Florida probate law is an integral part of the procedure adopted in Florida for the administration and determination of decedents' estates. The administration and distribution of such estates is a function and power reserved solely to the States under the Tenth Amendment. It is not a power vested in the Federal Government. The decision of the Court below holding that the provisions of the Jones Act override the probate law constitutes an unconstitutional invasion of the States' power to administer estates. We are here dealing with not just a question of Federal law, but with two separate and independent spheres of the law—maritime and probate. While the Jones Act is supreme in the determination of the Respondent's rights, the Florida probate act is equally supreme in the determination of the manner in which those rights must be enforced once the vessel owners have passed on, and the Respondent must look to their estates for satisfaction. In the probate proceedings, the Respondent's claim is entitled to no privileges not shared by all other claims. Since there was no compliance with the provisions of the probate law, the Respondent's claim is barred.

ARGUMENT

QUESTION 1

WHEN A FOREIGN-FLAG VESSEL IS LOST UPON THE HIGH SEAS AND BEYOND THE TERRITORIAL JURISDICTION OF THE FORUM, IS NOT THE QUESTION OF THE SURVIVAL OF A TORT CLAIM

AGAINST THE DECEASED VESSEL OWNERS, WHICH IS FOUNDED UPON SUCH LOSS, DETERMINED BY THE MARITIME LAW RATHER THAN BY THE LAW OF THE FORUM?

This action was brought against the administrators of one deceased vessel owner and the distributees of another deceased owner of the same vessel. The complaint is based solely upon the provisions of the Jones Act. No other jurisdiction is alleged. The Court of Appeals clearly recognized that the Jones Act does not confer a right of action in favor of the Plaintiff and against the Defendants in this suit, since the Jones Act does not provide for the survival of actions against the personal representatives of a deceased tort-feasor. Specifically, the Court of Appeals said (R. 21):

> "Thus, there is nothing in the Jones Act which grants to seamen a right to bring an action against anyone except his employer and as the Act does not in terms provide for survival of actions against the estate of the deceased tort-feasor we are unwilling as in Nordquist v. United States Trust Co. of New York, 2 Cir., 188 F. 2d 776, to supply what the Congress omitted by reading a survival proviso into the statute where no legislative intent thereof is discoverable. If the law is to be changed it ought to be by an Act of Congress."

With that part of the opinion below, we concur.

But the Court then looked to see if the Plaintiff's cause of action could have survived the death of the vessel owners by virtue of any other applicable laws. The majority con-

cluded that since under the law of Florida an action survived the death of the tort-feasor, the Plaintiff could proceed in this cause. It is with this ruling that the Petitioners take issue. In reaching the conclusion that the law of Florida as to survival of actions was applicable, the Court below ignored the fact that the survival of actions against deceased tort-feasors is a matter of substantive law. It is, therefore, governed not by the law of the forum in which the Court may be sitting, but by the lex loci delicti commisi—the law of the place where the tort was committed.

Here, the alleged tort occurred upon the high seas and not within the territorial limits of the State of Florida. The facts in this case are, therefore, materially and substantially different from those presented in **Just v. Chambers,** 312 U. S. 383, 61 S. Ct. 687, 85 L. Ed. 903. There, the injuries occurred within the territorial waters of the State of Florida and this Court held that the Florida law as to survival should apply. But in our case, the alleged wrongful acts not having occurred within the territorial waters of Florida, the substantive law of Florida has no bearing whatsoever.

The action of the Court of Appeals in applying Florida law is in direct conflict with the decision of this Court in **Ormsby v. Chase,** 290 U. S. 387, 54 S. Ct. 687, 85 L. Ed. 903. There, an action was brought against an executor in Pennsylvania on a tort committed by the deceased in New York. While Pennsylvania recognized the survival of actions against deceased tort-feasors, New York did not. In denying the Plaintiff's right to maintain such an action, this Court said:

> "But the law of the place of the wrong determines whether the claim for damages survives the death of the wrongdoer."

and:

> "She (the plaintiff) could derive no substantive rights from the Pennsylvania survival statute."

This Court is not alone in reaching that conclusion. As the question of survival of actions has long been one on which the laws of the various states differed, the issue has been dscussed and decided in numerous opinions. The overwhelming weight of authority supports the position which this Court has previously taken. See **Annotations, 87 A. L. R. 852, 92 A. L. R. 1502, 17 A. L. R. (2d) 690.** See also **Restatement, Conflict of Laws, Sec. 390.** The recent decision of the California Supreme Court in **Grant v. McAuliffe,** 264 P. (2d) 944, holding the California law to be to the contrary, does not affect the weight of this authority.

The Court of Appeals was, therefore, in error in looking to the law of Florida, the forum, to determine the question of survival. That question should be determined by the law of the situs of the accident—the general maritime law.

What is the maritime law with respect to the survival of actions against deceased wrongdoers? This question is one which has arisen and been decided on several occasions. In each instance, the Courts have held that there is no survival of such actions under the general maritime law. While it is true that the issue has never been squarely determined in this Court, the law appears to be clear.

Whether we consider the general maritime law to be a development of the civil law, or whether we consider that common law principles govern, the law on the question of survival of actions will not differ. Under the common law, such an action did not survive. As was stated in **Henshaw v. Miller,** 17 How. 212, 15 L. Ed. 222:

> "The maxim of the common law is 'actio personalis mortiur cum persona,' and as this maxim is recognized both in England and in Virginia, the interpretation of it in the former country becomes pertinent to its exposition or application here. In England it has been expounded to exclude all torts when the action is in form ex delicto, for the recovery of damages, and the plea not guilty. That in case of injury to the person, whether by assault, battery, false imprisonment, slander or otherwise, **if either party who received or committed the injury die, no action can be supported either by or against the executors or other personal representatives."** (Emphasis ours)

Neither did an action survive the death of the tort feasor under the civil law. **Edwards v. Ricks,** 30 La. Ann. 926. Nor did any right of action exist for a wrongful death under either the common law or the civil law. With respect to the civil law, this fact is pointed out in **Hubgh v. The New Orleans & Carrollton R. R.,** 6 La. Ann. 495. Such was declared to be the common law by this Court in **Mobile Life Ins. Co. v. Brane,** 95 U. S. 756, 24 L. Ed. 580. And in the **Harrisburg,** 119 U. S. 199, 7 S. Ct. 140, 30 L Ed. 358, it was finally settled that neither was there such an action under the general maritime law, as administered by the Courts of the United States.

We therefore, find that with respect to its determination by this Court, the question of the maritime law as to the survival of actions against deceased tort-feasors rests in the same position as did the question of the maritime law with respect to actions for wrongful death, prior to this Court's opinion in the **Harrisburg.** In neither instance does a cause of action lie under either the common or the civil law. The reasoning of the Court in arriving at its decision in the **Harrisburg** necessarily lends itself to the present question. That reasoning is simple and concise. After pointing out that the laws of the various countries differ, Chief Justice Waite said:

> "But, however this may be, we know of no country that has adopted a different rule on this subject for the sea from that which it maintains on the land; and the maritime law, as accepted and received by maritime nations generally, leaves the matter untouched. It is not mentioned in the laws of Oleron, of Wisbuy, or of the Hanse Towns, (1 Pet. Adm. Dec. Appx.;) nor in the Marine Ordinance of Louis XIV., (2 Pet. Adm. Dec. Appx.;) and the understanding of the leading text writers in this country has been that no such action will lie in the absence of a statute giving a remedy at law for the wrong. Ben. Adm. (2d Ed.) S 309; 2 Pars. Shipp. & Adm. 350; Henry, Adm. Jur. 74. The argument everywhere in support of such suits in admiralty has been, not that the maritime law, as actually administered in common-law countries, is different from the common law in this particular, but the common law is not founded on good reason, and is contrary to 'natural equity and the general principles of law.' Since,

however, it is now established that in the courts of the United States no action at law can be maintained for such a wrong in the absence of a statute giving the right, and it has not been shown that the maritime law, as accepted and received by maritime nations generally, has established a different rule for the government of the courts of admiralty from those which govern courts of law in matters of this kind, we are forced to the conclusion that no such action will lie in the courts of the United States under the general maritime law. The rights of persons in this particular, under the maritime law of this country, are not different from those under the common law; and as it is the duty of courts to declare the law, not to make it, we cannot change this rule."

This reasoning was again expressed in **Western Fuel Co. v. Garcia,** 257 U. S. 233, 46 S. Ct. 89, 66 L. Ed. 210:

"It is established doctrine that no suit to recover damages for the death of a human being caused by negligence, may be maintained in the admiralty courts of the United States under the general maritime law. At the common law no civil action lies for the injury resulting from death. The maritime law as generally accepted by maritime nations leaves the matter untouched and in practice each of them has applied the same rule for the sea which it maintains on land."

When this principal is applied to the question at issue, we see that the law which the Courts of the United States

will accept as the general maritime law, in the absence of the establishment of a different rule by the maritime nations, is the common law, under which there is no survival of an action against a deceased tort-feasor. This result is bolstered by what has been referred to as the "unbroken, although slender, line of authority" by which the text writers and the lower Federal Courts have, without exception, held that under the general maritime law, such an action does not survive.

In **Crapo v. Allen,** Fed. Cases, No. 3360, it was contended that an administrator could maintain an action for injuries his intestate received upon the high seas. The Court held, however, that being maritime, the tort died with the person. This was true, even though under the law of the forum, Massachusetts, such actions did survive.

In re Statler, 31 F. (2d) 767, (Aff'd: 2 Cir., 36 F. (2d) 1021, cert, den. 281 U. S. 752), involved facts which in many respects are identical with those now under consideration. The "MIRAMAR", as did the "WINGATE", left port never to be heard from again. Suits based upon the Jones Act were filed against her owner by the representatives of the missing crew members. After trial of the cause, and before decision, the owner died. It was held that the action, being ex delicto, abated with the owner's death.

The Court of Appeals for the Fifth Circuit in the **Chambers v. Just,** 102 Fed. (2d) 105, considered at some length the question of survival of actions in admiralty. Citing the two above mentioned cases, it was held that under the Maritime Law there was no survival. While this Court reversed

that decision, it was on other grounds and this Court expressly refrained from deciding the issue now raised. **Just v. Chambers,** supra.

These decisions are in accord with the opinion of one of the early admiralty authorities in the United States. In **Dunlap's Admiralty Practice,** (published 1836), we find:

> "The death of a party does not in Admiralty necessarily abate the suit. Actions for injuries to the person do not survive to or against the representatives of either party; but actions respecting property survive, and the representatives may become or be required to become parties by a supplemental libel. (Hall's Ad. Practice, 21, 22.) But this does not apply to cases of personal wrongs, which die with the person, as at common law, the maxim of which, **actio personalis moritur cum persona,** is derived from the civil law. **Pennhallow v. Doane,** 3 Dallas 78, 102 (2 Roll. Rep. 18; 2 Lev. 6.)"

The reference to **Pennhallow v. Doane,** one of the early decisions of this Court, is of particular significance. It was there contended, in an in rem action, that the death of a claimant abated the cause. But it was held that such a position was unavailing since that action, unlike the one now at bar, was in rem. It is significant, however, to note that the successful argument advanced by the Respondent admitted that "Regularly, indeed, a suit abates by the death of a party."

It is, therefore, apparent that under the general maritime law, actions do not survive the death of the tort-feasor.

Since this be true, the Respondent here has no cause of action and his complaint should stand dismissed.

QUESTION 2.

IF THE LAW OF THE FORUM AS TO SURVIVAL OF ACTIONS IS TO APPLY, MUST NOT THE PLAINTIFF (IN A JONES ACT CASE) COMPLY WITH ALL OF THE APPLICABLE LAWS OF THAT FORUM, INCLUDING SPECIFICALLY THE REQUIREMENT THAT NOTICE OF SUCH CLAIM MUST BE FILED IN ESTATE PROCEEDINGS WITHIN A SPECIFIED TIME?

If the Florida law as to survival of actions against deceased tort-feasors does apply in a Jones Act case arising upon the high seas, must not the Plaintiff then comply with **all** of the applicable laws of Florida, including specifically the requirement that notice of such claim must be filed in the Probate proceedings within a specified time?

For the purpose of arguing this question, we must assume that the Florida law as to survival of actions is applicable and that the Respondent is thereby permitted to bring this action against the representatives of the deceased vessel owners. Thus finding himself in Court by virtue of and in reliance upon the Florida law, can the Plaintiff then pick and choose those parts of that law which suits his convenience, yet disregard those parts with which he has not complied, and which would disallow his claim? We think the answer is clear. As stated by Judge Hutcheson in the dissenting opinion below, if the action sued on is that afforded by the State, then it must be taken **cum onere.**

The controlling authorities certainly support this view. While the law of Florida does provide for the survival of tort actions, the statutes also declare, in unequivocal terms, that there shall be no survival of actions against deceased persons unless a claim is filed in the Probate proceedings within eight months from the first publication of the notice to creditors. Any claim not so filed is **void.** Specifically, the pertinent part of the statute provides:

> ". . . Any such claim or demand not so filed within eight months from the time of the first publication of the notice to creditors shall be void . . . and no cause of action, at law or in equity, heretofore or hereafter accruing, including but not limited to actions founded upon fraud or other wrongful act or ommission, shall survive the death of the person against whom such claim may be made, ..., unless such claim be filed in the manner and within the said eight months as aforesaid." Sec. 733.16 (1), Florida Statutes; Ch. 23970, Law of Florida, 1947.

In considering the effect of this language upon claims not so filed, the Supreme Court of Florida has said:

> ". . . it is apparent that it is a matter of public policy in this State that estates of decedents shall be **speedily** and **finally determined.** To effect this policy, statutes of nonclaim and of limitations have been set up. When these limitations have expired, any and all claims of **whatsoever nature** are **barred forever."** (emphasis by the Court). **Bedenbaugh v. Lawrence,** 141 Fla. 341, 193 So. 74.

Yet the Respondent contends that this part of the law of Florida does not apply to him. Admittedly, no claim was filed in either estate until many months after the time for such filing had expired. The Court below has found that the Respondent's suit is permissable because the law of Florida provides for the survival of actions. We say that if the law of Florida is to be considered, then **all** of the Florida law with respect to survival is applicable, and under that law it is expressly provided that no cause of action shall survive unless a claim is timely filed.

This Court had before it precisely the same principle in the **Harrisburg,** supra, a suit brought to recover for a wrongful death. One of the contentions there was that even though there might not be such an action under the maritime law, both the law of Pennsylvania, the home state of the vessel, and the law of Massachusetts, the place where the death occurred, allowed actions for wrongful death. But in both states it was necessary that such action be commenced within one year, and this requirement had not been met. In upholding the limitations, it was said:

> ". . . it would seem to be clear that, if the admiralty adopts the statute as a rule of right to be administered within its own jurisdiction, it must take the right subject to the limitations which have been made a part of its existence."

This holding was followed in **Western Fuel Co. v. Garcia,** 257 U. S. 233, 46 S. Ct. 89, 66 L. Ed. 210, a case involving a death claim arising under the California law, but which had been started after the time had expired. In **Lev-**

inson v. Deupree, 245 U. S. 648, 73 S. Ct. 914, 97 L. Ed. 1319, it was again cited with approval. The Fourth Circuit has also recently recognized its application. In **Continental Casualty Co. v. The Benny Skou,** 200 F. (2d) 246, they held:

> "Virginia has bestowed upon admiralty a right to grant recovery not previously possessed by admiralty. The endowment must be taken **cum onere.** As appellant grounds his action upon the Virginia Statute, he is obliged to accept that statute in its entirety as construed by the Virginia court of last resort."

It would seem to be beyond the realm of logic to say that while under the maritime law there could be no suit because there is no survival, and while under the Florida law there could be no suit because no claim was timely filed; yet by a union of the two, a hybrid claim can arise which transcends both of its sources and gives rise to an action which could not be maintained under either law standing alone. It is apparent that the Respondent must take the bitter with the sweet. Being in the first instance fortunate enough to be able to sue in a forum whose laws permit the survival of actions, he must of necessity suffer the consequences of his failure to bring such suit within the time required by the very laws upon which his action rests.

QUESTION 3.

DOES NOT THE TENTH ADMENDMENT TO THE UNITED STATES CONSTITUTION RESERVE TO THE STATES THE EXCLUSIVE POWER TO GOVERN THE

ADMINISTRATION AND DISTRIBUTION OF THE ESTATES OF DECEDENTS, AND DOES NOT THE DECISION OF THE COURT OF APPEALS IN IGNORING THE NON-CLAIM SECTION OF THE FLORIDA PROBATE LAW DO VIOLENCE TO THAT AMENDMENT BY PERMITTING A FEDERAL LAW, THE JONES ACT, TO INTERFERE WITH THE ADMINISTRATION OF DECEDENTS' ESTATES?

Apart from the considerations previously set forth, there is still another compelling and independent reason why the non-claim provision of the Florida Probate Law must be considered as a bar to this action.

In its opinion the Court of Appeals held that the only limitation that existed upon the right of the Respondent to sue was the three years allowed under the Jones Act. It refused to consider the Florida non-claim statute as applicable, treating it as merely another statute of limitations which was superceded by the paramount provision contained in the Jones Act. The principle authority cited, and quoted, was **Engle v. Davenport,** 271 U. S. 33, 46 S. Ct. 410, 70 L. Ed. 813. But that case holds, merely, that the three-year limitation is a part of the right which is created, and that where there are conflicting state statutes of limitations, those prescribed in the Jones Act will apply. This is admittedly true. We do not contend that the State non-claim statute is applicable merely because it sets forth a time limit which, in this particular instance, is shorter than that provided by the Jones Act. The reliance of the Court below upon this authority well illustrates that it failed to grasp the full significance of the issue involved.

The State non-claim provision is an integral part of the laws adopted by the State of Florida for the administration of the estates of its deceased residents. Such administration is a function and power reserved solely to the State and is not a power vested in the Federal Government. Therefore, insofar as it tends to conflict with the Florida probate act and the proper administration of estates under its provision, the Jones Act is not applicable. The opinion of the Court of Appeals in holding that such act is paramount to the probate laws of the State constitutes a violation of the Tenth Amendment which, in effect, reserves to the States the exclusive power to administer such estates.

There can be no doubt but that the non-claim provision ot the Florida Probate Law is an integral and essential component. This was well established by the language used by the Supreme Court of Florida in **Bedenbaugh v. Lawrence,** supra, holding it to be the public policy of our State that decedents' estates be "speedily and finally determined," and further pointing out, that the non-claim statute was set up "to effectuate this policy."

It has been equally well established that the administration of decedents' estates, and the matters pertaining thereto, are wholly matters of state cognizance. Certainly there is nothing in the Constitution which would indicate that the Federal Government was ever granted such power. Such authority must, therefore, of necessity, have remained with and been reserved to the State under the provisions of the Tenth Amendment.

This fact has been recognized by the Courts on several occasions. In **Harris v. Zion Savings Bank and Trust Company,** 127 Fed. (2d) 1012, The Tenth Circuit held:

> "Federal Courts have no probate jurisdiction. Power to administer estates resides entirely with the states."

In full accord is the decision of the Supreme Judicial Court of Massachusetts in **Petition of Worcester County National Bank,** 263 Mass. 217, 162 N. E. 217:

> "It seems to us not open to debate that the general subject of the settlement of estates of deceased persons and the appointment of fiduciaries to administer trusts is within the exclusive jurisdiction of the state. No clause of the Constitution of the United States confers any such power upon the Congress. Art. 1, Sec. 8. That power is not forbidden to the states, Art. 1, Sec. 10. It is made purely of state rather than national cognizance. It falls among the powers reserved to the states by Article 10 of the Amendments."

This Court has announced similar rulings on many occasions. In **Cope v. Cope,** 137 U. S. 682, 11 S. Ct. 222, 34 L. Ed. 832, a case involving the powers of the Utah Territorial Legislature, the Court, after finding that such powers were generally as plenary as those of a State Legislature, said:

> "The distribution of and the right of succession to estates of deceased persons are matters exclusively of

> state cognizance, and are such as were within the competence of the Territorial Legislature to deal with as it saw fit . . . ."

Again, in **Lyeth v. Hoey,** 305 U. S. 188, 59 S. Ct. 155, 83 L. Ed. 119, while holding that the question as to what constitutes taxable income was one of federal cognizance, this Court recognized that:

> "The local law determines the right to make a testamentary disposition of such property and the conditions essential to the validity of wills, and the state courts settle their construction. **Uterhart v. United States,** 240 U. S. 598, 603, 36 S. Ct. 417, 60 L. Ed. 819. The states establish the procedure governing the probate of wills and the power of administration."

See also, **Irving Trust Co. v. Dey,** 314 U. S. 556, 62 S. Ct. 398, 86 L. Ed. 452; and **Demorest v. City Bank Farmers Trust Co.,** 321 U. S. 36, 64 S. Ct. 384, 88 L. Ed. 526.

In **Harris v. Zion Savings Bank and Trust Company**, 317 U. S. 447, 63 S. Ct. 354, 87 L. Ed. 390, a case involving a conflict between the Bankruptcy Act and the Utah probate law, this Court held:

> "When we reflect that the settlement and distribution of decedents' estates and the right to succeed to the ownership of realty and personalty are peculiarly matters of state law; that the federal courts have no probate jurisdiction and have sedulously refrained even in diversity cases from interfering with the operations of state tribunals invested with that jurisdiction, we nat-

urally incline to a construction of Sec. 75, consistent with these principles. We think the beneficent purpose of the legislation will not be defeated by such a construction."

In the Harris case the Court expressly refrained from considering the issue of constitutional power. Instead, the question was approached on the grounds of whether Congress in enacting the Bankruptcy Act had intended to override the state probate law; the conclusion being, as noted above, that it was not the intention of Congress to do so, and that such a construction did not defeat the beneficent purpose of the act.

We do not believe that Congress ever intended by the enactment of the Jones Act to invade the province of the States in connection with the administration of estates, and the Court may again not feel constrained to consider the constitutional issue. It would certainly seem apparent that the general beneficent purposes encompassed by the Jones Act could not be defeated by a construction of that Act which held that it was not its intent or purpose to invade the area reserved to the states in the administration of estates.

In either case, the decision of the Court of Appeals is in error, since its effect is to say not only that Congress intended this Act to so apply, but that Congress also had the power to do so. The remarks addressed herein to the constitutional issue naturally apply as well to the question of Congressional intent and the purpose of the Act, since the former issue being of greater scope, necessarily includes the latter.

We have seen that in the Harris case a seeming conflict between the Bankruptcy Act and the probate law was resolved in favor of the probate law. Such was also the ruling in Massachusetts with respect to a similar conflict between the banking laws and the probate law. As the powers of the Federal Government to enact laws relating to bankruptcy, banking and maritime matters are derived from the same source, it is readily apparent that principles of conflict governing some of these fields must be applicable to all.

While the Court of Appeals looked upon this case as one involving an issue cognizable solely under the Federal statute; in reality, it presents independent issues arising under both the Federal and the State laws. Once it is realized that we are here concerned with two sovereign and independent spheres of the law, the maritime and the probate, the problem takes on its true perspective. That the Federal Government has full power to prescribe the nature and extent of the vessel owners' liability to the Respondent, including the time within which an action to enforce that liability could have been instituted against the vessel owners, is without question. However, upon the death of those owners, the administration of their estates became solely a matter to be governed by the probate law of Florida. While the Respondent still retains the rights granted to him by the Jones Act, if he desires to assert those rights against the Petitioners, he must proceed under the provisions of the probate law. He possesses no superior rights by virtue of his claim. It is of no greater, or lesser, dignity than any other claim based upon an existing and unexpired right.

Each law, federal and state, is superior within its own sphere. Each must, necessarily, respect the other and rec-

ognize such supremacy. The Jones Act can no more interfere in the manner here proposed with the administration provisions of the probate law, than could the probate law interfere with the Jones Act by, for example, prohibiting the filing in the administration proceedings of any claims arising upon the high seas

The Maritime Law, be it statutory or otherwise, occupies no higher plane than do similar laws of any other sovereign jurisdiction. If the principle announced in the opinion below is correct, there is nothing to prevent the Congress from requiring estates involving maritime claims, or even claims arising from any form of interstate or foreign commerce, to be actually administered in the Federal Courts. Such action would not involve any power not already assumed to rest with the Federal Government under that decision. It would involve solely the degree to which the Federal Government would exercise that power.

While the above illustration may appear exaggerated, such an action could not result in any greater disruption of the State's probate jurisdiction than has already occurred in this particular instance if the decision below is allowed to stand. The estate of Captain Farrington was completely and finally administered, the assets distributed, and the administratrix discharged long prior to the filing of this suit. If the Respondent is successful in this action, the decree of the probate court vesting the assets of his estate in his widow and minor child will be completely nullified. The effect will be to hold for naught the entire probate proceedings. Although the Courts have apparently taken judicial notice of the fact that "substantially all maritime risks are insured",

Keen v. Overseas Tankship Corp., 194 Fed. (2d) 2595, this is the exception which tends to prove the rule. A judgment in this case will be satisfied directly from the assets of the estates and in direct violation of the terms of the decrees of the probate court, and the statutes of the State of Florida.

The prior authorities and common logic both compel the conclusion that the claims against these estates must have been timely filed under the probate law of the State of Florida. The failure to do so constitutes a bar to this action.

CONCLUSION

The three questions heretofore presented are independent in the sense that a finding for the Petitioners on any one of these three issues requires a reversal of the opinion below. We respectfully submit that for any, or all, of the reasons herein argued, the decision of the Court of Appeals should be reversed, and the judgment of the District Court should be affirmed.

DOUGLAS D. BATCHELOR

DAVID W. DYER

By_____

Attorneys for Petitioners

Supreme Court of the United States

October Term, 1953

No. 40

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

vs.

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

MONTE K. RASSNER,
Attorney for Respondent,
550 Brickell Avenue,
Miami 32, Florida.

JACOB RASSNER,
of Counsel.

Supreme Court of the United States

October Term, 1953

No. 691

BESSIE B. COX and JOHN G. THOMPSON, as Administrators of the Estate of Sid Cox, Deceased; HENRIETTA A. FARRINGTON and HOWARD C. FARRINGTON,

Petitioners,

vs.

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

RESPONDENT'S BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

The questions presented do not fall within the category of matters which merit review by this Court.

The First Question

1. Where a foreign flag vessel is lost upon the high seas and beyond the territorial jurisdiction of the forum, is not the question of the survivorship of a cause of action founded upon such loss against a deceased tort feasor to be determined by the Maritime Law rather than by the law of the forum?

The petitioners being American citizens, the flag of the vessel is entirely immaterial. There does not seem to be any division of jurisprudence which has been classified as "Maritime Law".

There can be no distinction drawn between existing law and theoretical non-existent law.

The Second Question

2. If the law of the forum as to survivorship of actions is to apply, must not the plaintiff (in a Jones Act case) comply with all of the applicable laws of that forum, including specifically the requirement that notice of such claim must be filed in estate proceedings within a specified time?

The question as to the Jones Act taking precedence over State Law has been so well settled that further review does not seem to be indicated.

This was fully discussed by the Court below in the case at bar in the opinion which is reported in 210 F. (2d) at page 80 as follows:

> "In Lindgren v. United States (281 U. S. 38, 50 S. Ct. 211), the court made these pertinent observations in reference to the Jones Act. It 'establishes as a modification of the prior maritime law a rule of general application in reference to the liability of the owners of vessels for injuries to seamen extending territorially as far as Congress can make it go; that this operates uniformly within all of the States * * *; and that, as it covers the entire field of liability for injuries to seamen, it is paramount and exclusive, and supersedes the operation of all state statutes dealing with that subject."

The Third Question

3. Does not the tenth amendment to the United States Constitution reserve to the states the exclusive power to govern the administration and distribution of the estates of decedents, and does not the decision of the Court of Appeals in ignoring the non-claim section of the Florida probate law do violence to that amendment by permitting a Federal law, the Jones Act, to interfere with the administration of decedents' estates?

Petitioners concede at page 11 that they would be governed by the Jones Act had Cox and Harrington been alive until the termination of the action.

The obsolete and archaic principles of law which in the past permitted miscarriage of justice on mere technicality, are no longer tolerated by our Courts.

This Court has repeatedly stated that it will be governed by principles of substantial justice rather than by technicalities. *Pope & Talbot* v. *Hawn*, 74 S. Ct. 202.

In the case of *Nordquist* v. *United States Trust Co. of New York*, 188 F. (2d) 776, the Court reviewed the underlying principles of justice in treating with matters involving survivorship rights against decedents, as to rights created by the Jones Act.

Concluding with the following comments at page 778, wherein the Court stated as follows:

> "* * * Where the frustration of the clear purposes of the Act is so patently the result of a failure to foresee the consequences of a seldom recurring situation, the courts in this strictly limited sphere have never been inclined to let the plaintiff go remediless. E. g., Cabell v. Markham, 2 Cir., 148 F. 2d 737, affirmed 326 U. S. 404, 66 S. Ct. 193, 90 L. Ed. 165; Securities and Exchange Commission v. United States Realty & Improvement Co., 310 U. S.

434, 60 S. Ct. 1044, 84 L. Ed. 1293; Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U. S. 315, 332, 59 S. Ct. 191, 83 L. Ed. 195; Rector etc. of Holy Trinity Church v. United States, 143 U. S. 457, 12 S. Ct. 511, 36 L. Ed. 226. We, therefore, read into the Jones Act the omitted survival proviso and remand the cause for a trial upon the merits * * *."

It is respectfully submitted that the petition be denied.

MONTE K. RASSNER,
Attorney for Respondent.

JACOB RASSNER,
of Counsel.

Supreme Court of the United States

October Term, 1954
No. 40

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Petitioners,

vs.

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

BRIEF OF RESPONDENT

MONTE K. RASSNER
and
JACOB RASSNER,
Attorneys for Respondent.

JACOB RASSNER,
HERBERT J. KAPLOW,
HARVEY GOLDSTEIN,
on the Brief.

SUPREME PRINTING CO., INC., 114 WORTH STREET, N. Y. 13. BEEKMAN 3-2320

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Petitioners,

vs.

ARTHUR ROTH, as Administrator of the Estate of James Dean, Deceased,

Respondent.

BRIEF OF RESPONDENT

Constitutional and Statutory Provisions Involved

In addition to the Jones Act, 46 U. S. C. § 688 and the Florida Statutes Section 733.16, set forth in full at pages 2 and 3 of Petitioners' brief, there is here involved Art. I, Sec. 8, cls. 10, 11, 18 and Art. III, Sec. 2 of the Constitution of the United States and the Federal Employers' Liability Act, 45 U. S. C. § 51, *et seq.*

Constitution of the United States

ARTICLE I

Section 8. Clauses 10, 11, 18.

> "To define and punish Piracies and Felonies committed on the high Seas, and Offences against the Law of Nations;"
>
> "To declare War, grant Letters of Marque and Reprisal, and make Rules concerning Captures on Land and Water;"

"To make all Laws which shall be necessary and proper for carrying into Execution the foregoing Powers, and all other Powers vested by this Constitution in the Government of the United States, or in any Department or Officer thereof."

ARTICLE III

Section 2.

"The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority;—to all Cases affecting Ambassadors, other public Ministers and Consuls;—to all Cases of admiralty and maritime, Jurisdiction; * * * "[1]

Statement

The M/V "Wingate", a motor vessel, was owned and operated by H. C. Farrington, Sid Cox and another, all citizens of the United States and residents of the State of Florida. The owner employed a crew which included H. C. Farrington, master and part owner, and James Dean, seaman. On or about December 22, 1949, while on the high

---

[1] 46 U. S. C. § 688, authorizing recovery for injury to or death of a seaman is valid legislation under admiralty powers of the federal government. *Panama Agencies Co.* v. *Franco*, C. C. A. Canal Zone 1940, 111 F. (2d) 263.

Control of Congress over maritime law is derived from Art. I, § 8, cls. 10, 11, 18 of the Constitution, conferring general power to make all laws necessary and proper for the carrying into execution all other powers vested by the Constitution in the United States government and Art. III, § 2, extending judicial power to cases of admiralty and maritime jurisdiction, and not from the commerce clause of the Constitution, Art. I, § 8, cl. 3. *Stoffel* v. *W. J. McCahan Sugar Refining & Molasses Co.*, D. C. Pa. 1929, 35 F. (2d) 602, affd. 41 F. (2d) 651.

seas, the vessel foundered and was lost with result that H. C. Farrington and James Dean lost their lives by drowning at sea. Sid Cox, another part-owner of the vessel died (of causes bearing no relation to the diaster) in January 1951.

Arthur Roth, as administrator of the Estate of James Dean, commenced an action for wrongful death under the Jones Act, 46 U. S. C. § 688, in the United States District Court for the Southern District of Florida in October 1952 (within 3 years after the disaster) against Bessie B. Cox and John G. Thompson as Administrators of the Estate of Sid Cox and Henrietta A. Farrington and Howard C. Farrington as Distributees of the Estate of H. C. Farrington.

The defendants moved for summary judgment. The District Court granted the motion and dismissed the complaint. No opinion was written by the Court. Upon appeal, the United States Court of Appeals for the Fifth Circuit reversed, Chief Judge Hutcheson dissenting. Re-hearing was denied. Opinion of the United States Court of Appeals is reported in 210 F. (2d) 76. Petition for writ of certiorari was granted June 7, 1954.

Issues Presented

1. Does an action on behalf of a seaman-employee against the estate of a United States citizen-employer-shipowner survive upon the death of the tort-feasor, who was the citizen-employer-shipowner?

2. Can a procedural State statute involving probate claims dilute and impair a substantive Federal right granted by Congress pursuant to its Constitutional powers?

POINT I

Substantive rights created by federal statute are entitled to enforcement by our federal courts and cannot be diluted, curtailed or eliminated by procedural technicalities or prerequisites created by State Laws.

The Respondent's action is predicated on the Jones Act which embodies a three year Statute of Limitations.[2] The Jones Act incorporates by reference all the provisions of the Federal Employers' Liability Act.[3]

Being substantive in nature, the right to bring an action under the Jones Act within three years cannot be diluted, shortened or extinguished by any procedural State Statute. Our Courts have uniformly held that the three year period of time within which to commence an action

---

[2] 46 U. S. C. § 688 gives a seaman-employee (or his representatives in case of seaman's death) a right of action, founded on negligence against the employer-owner of the vessel, and by incorporation of the Federal Employers' Liability Act, must be commenced within three years after the date of accident.

> **"45 U. S. C. § 56. Actions; limitations; concurrent jurisdiction of courts.**
>
> No action shall be maintained under this chapter unless commenced within three years from the day the cause of action accrued."

[3] 45 U. S. C. §§ 51-60, which, by section 57, provides for survival of an action after the death of the tort-feasor.

45 U. S. C. § 57 reads as follows:

> **"§ 57. Who included in term 'common carrier.'**
>
> The term 'common carrier' as used in this chapter shall include the receiver or receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier. Apr. 22, 1908, c. 149, § 7, 35 Stat. 66."

See: *Engel* v. *Davenport*, 271 U. S. 33;
Port v. *Litolff*, 103 F. (2d) 302.

under the Jones Act cannot be altered under any circumstances.[4]

We are here concerned with the question of whether an action under the Jones Act survives upon the death of the employer-owner tort-feasor. The question has been answered in the affirmative in the case at bar by the Court

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[4] The death of respondent's decedent James Dean, a seaman-employee, occurred on December 22, 1949. There is no dispute that the Jones Act three year Statute of Limitations governed respondent's time to commence action from December 22, 1949, until January 1951, the date of death of Sid Cox, employer-owner. If this action had been commenced prior to January 1951, the District Court concededly could not have granted summary judgment for failure to comply with the eight month "non-claim" probate Statute of Florida (Sec. 733.16, Florida Statutes) since the question could not have arisen as the employer-owner was alive. However, because of circumstances, action was not commenced until October 1952, after the eight month claim period expired, but before the expiration of the three year statute of limtations of the Jones Act.

The Jones Act period of limitation will not be extended by claimant's disability to sue because of infancy or insanity or by delay occasioned by fraud of defendant, and defendant cannot waive defense thereunder of limitations.

See: *Osbourne* v. *U. S.*, 164 Fed. (2d) 767.

The time limitation of three years established by F. E. L. A. 45 U. S. C. § 56 is a substantive part of plaintiff's cause of action.

See: *Osbourne* v. *U. S., supra*;
Ran v. *Atlantic Refining Co.*, 87 F. Supp. 853.

Period of limitation under Jones Act will control the time for bringing suit regardless of state statutes of limitation.

See: *Osbourne* v. *U. S., supra.*

below on the basis of State law.[5] The United States Court of Appeals for the second circuit in the case of *Nordquist* v. *United States Trust Co. of New York*, 188 F. (2d) 776 has answered this very same question, also in the affirmative, on the basis of Federal law—the Jones Act.[6]

---

[5] *Roth* v. *Cox*, 210 F. 2d 76, at page 79:

"[2-4] In the absence of some specific provisions as to the survivability of the causes of action which the statute authorizes the statute must be measured in the light of the common law rule of survival."

* * *

"It follows that state Legislatures are competent to enact survival statutes which may be enforced as a common-law remedy. While it may be true that admiralty may not enforce the remedy, even by libel in personam, yet it is not an encroachment on admiralty jurisdiction because it is excepted from that jurisdiction by the savings clause. Under the common law of Florida as modified by the statutes of the state a cause of action for a tort survives the death of the tort-feasor and may be maintained against his personal representative.[3]

[3] *Waller* v. *First Savings & Trust Co.*, 1931, 103 Fla. 1025, 138 So. 780; F. S. A. sec. 45.11."

[6] *Nordquist* v. *United States Trust Co. of New York*, 188 F. 2d 776:

"[1, 2] The rule that suits *ex delicto* brought in admiralty abated with the death of the tort-feasor was before the Supreme Court in Just v. Chambers, 312 U. S. 383, 61 S. Ct. 687, 85 L. Ed. 903. There Chief Justice Hughes, writing the opinion of the court said in a footnote at page 387 of 312 U. S., at page 691 of 61 S. Ct. that: 'The rule of the non-survival of a cause of action against a deceased tort-feasor has but a slender basis in admiralty cases in this country.' But the decision in Just v. Chambers went on the ground that a statute of the State of Florida, within whose territorial waters the accident happened, preserved the plaintiff's cause of action against the deceased tort-feasor for negligent injury, since the Florida act was not inconsistent with the general principles of the maritime law. The Supreme Court accordingly permitted recovery in admiralty. We do not think that the dictum quoted from the footnote

[6] (Continued)

of Chief Justice Hughes can be taken to have reversed the unbroken, though slender line of authority which he cited to the effect that such suits do not survive under the maritime law where it is not modified by some statute. Therefore, until the Supreme Court should rule to the contrary it would seem that suits brought in admiralty to recover for wrongful death would abate as at common law in the absence of a survivorship statute. Because of what we have come to believe was an implied survivorship provision in the Jones Act we are convinced that our decision in The Miramar, supra, in so far as it construed that Act as not altering the above rule should not be followed, although it must be conceded that survival of actions against the estate of a deceased tort-feasor causing wrongful death are not specifically provided therein. The Act provides that '* * * all statutes of the United States modifying or extending the common-law right or remedy in cases of personal injury to railway employees shall apply * * *.' [46 U. S. C. A. § 688] to actions brought under it. The Federal Employers' Liability Act, 45 U. S. C. A. §§ 51-60, made applicable to seamen by the Jones Act provides for survival in all cases arising under it. Section 59 covered the situation where the injured party died, and § 57, while not in terms providing for survvial defines a 'common carrier' subject to suit as including 'receivers or other persons or corporations charged with the duty of the management and operation of the business of a common carrier.' That definition was sufficient to prevent the abatement of any death action arising out of the operation of a railroad since railroads are continued in operation despite such corporate disasters as bankruptcy and receivership which are analogous to the death of an individual. Failure to imply a survivorship provision in the Jones Act in such a situation as the one before us does violence to the expressed policy of that Act by depriving seamen of any remedy where the tort-feasor has died, whereas a railroad employee would not be under the same disability because the exact situation could not arise since the railroad corporation would survive in some guise that would be subject to suit.

[3] Were such a situation presented with any frequency we might be constrained to leave its correction to the Congress for

We humbly suggest that the Jones Act takes precedence but that the Florida Survival Statute, Section 45.11, as interpreted by the Court below, be considered in *pari materia* therewith.[7]

---

[6] (Continued)

if there could be any fair doubt that the omission of a survival proviso was intentional, it would be beyond our power to supply it. But this appears to be only the third litigated case where survivorship against the estate of the tort-feasor has been asserted and recovery was allowed under a state statute in one of the preceding two, Just v. Chambers, supra. Where the frustration of the clear purposes of the Act is so patently the result of a failure to foresee the consequences of a seldom recurring situation, the courts in this strictly limited sphere have never been inclined to let the plaintiff go remediless. E. g., Cabell v. Markham, 2 Cir., 148 F. 2d 737, affirmed 326 U. S. 404, 66 S. Ct. 193, 90 L. Ed. 165; Securities and Exchange Commission v. United States Realty & Improvement Co., 310 U. S. 434, 60 S. Ct. 1044, 84 L. Ed. 1293; Armstrong Paint & Varnish Works v. Nu-Enamel Corp., 305 U. S. 315, 332, 59 S. Ct. 191, 83 L. Ed. 195; Rector etc. of Holy Trinity Church v. United States, 143 U. S. 457, 12 S. Ct. 511, 36 L. Ed. 226. We, therefore, read into the Jones Act the omitted survival proviso and remand the cause for a trial upon the merits."

[7] The Second Circuit opinion finds an implied provision in the Jones Act that the cause of action survives against a deceased tort-feasor while the Fifth Circuit reasons that the cause of action under the Jones Act survives by way of the Florida Survival Statute providing for survival of actions which implements and augments the rights granted. The Jones Act does not explicity and in so many words state that the cause of action survives against a deceased tort-feasor. However, in addition to the reasoning of the Second and Fifth Circuits, Sec. 57 of F. E. L. A. expressly provides for such survival of action. See footnote 3.

In making reference to the Florida Survival Statute the Respondent respectfully points out that the Survival Statute is separate, apart and wholly distinct from the Florida "non-claim" statute.

The question involved concerns remedial legislation and therefore merits liberal construction by this Honorable Court.[8]

Since the substantive right of survival of action under the Jones Act exists, whether by supplemental state statute (Florida Survival Statute) or by implication or by express incorporation by reference, a state procedural statute (Florida "non-claim" statute) cannot dilute this substantive right by reducing the statutory three year limitation period to a period of eight months commencing at an indefinite time after first publication of notice to creditors of the deceased employer-owner. This Court has repeatedly rejected such an attempt at evasion of responsibility on legal technicality or choice of forum. The latest expression is found in the decision of this Court in *Pope and Talbot Inc.* v. *Hawn et al.*, 74 S. Ct. 202, 346 U. S. 406.[9]

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[8] *Canadian Aviator, Limited* v. *U. S.*, 65 S. Ct. 639, 324 U. S. 215; *American Stevedores, Inc.* v. *Porello*, 67 S. Ct. 847, 330 U. S. 446;

Cosmopolitan Shipping Co., Inc. v. *McAllister*, 69 S. Ct. 1317, 337 U. S. 783 (p. 1321):

"The Jones Act was welfare legislation that created new rights in seamen for damages arising from maritime torts. As welfare legislation, this statute is entitled to a liberal construction to accomplish its beneficent purposes. * * * In considering similar legislation in other fields, we have concluded that Congress intended that the purposes of such enactments should not be restricted by common-law concepts of control * * *."

See also:

Thurston v. *U. S.*, 179 F. (2d) 514 (p. 515):

"(2) It is now long established that such legislation in favor of seamen must be construed strongly in their favor. * * * As welfare legislation, this statute is entitled to a liberal construction to accomplish its beneficent purposes."

[9] In *Pope & Talbot* v. *Hawn, supra*, the Court said:

"Even if Hawn were seeking to enforce a State-created remedy for this right, federal maritime law would be controlling. While States may sometimes supplement federal maritime policies [3] [3] See e.g., Just v. Chambers, 312 U. S. 383, 387-392, 1941 A. M. C. 430; Kelley v. Washington, 302 U. S. 1, 13, 1937

In a case involving this same Florida "non-claim" Statute (Sec. 733.16) this Court decided that the "non-claim" statute, since it deprived the United States of a remedy, had taken unto itself far too much power.[10].

---

[9] (Continued)

A. M. C. 1490 (1938)], a State may not deprive a person of any substantial admiralty rights as defined in controlling acts of Congress or by interpretative decisions of this Court. These principles have been frequently declared and we adhere to them. See e.g., Garrett v. Moore-McCormack Co., 317 U. S. 239, 243-246, 1942 A. M. C. 1645, and cases there cited. Caldarola v. Eckert, 332 U. S. 155, 1947 A. M. C. 847, does not support the contention that a State which undertakes to enforce federally created maritime rights can dilute claims fashioned by federal power, which is dominant in this field."

[10] See: *U. S.* v. *Summerlin*, 310 U. S. 414, wherein the Court said at page 417:

"If this were a statute merely determining the limits of the jurisdiction of a probate court and thus providing that the County Judge should have no jurisdiction to receive or pass upon claims not filed within the eight months, while leaving an opportunity to the United States otherwise to enforce its claim, the authority of the State to impose such a limitation upon its probate court might be conceded. But if the statute, as sustained by the state court, undertakes to invalidate the claim of the United States, so that it cannot be enforced at all, because not filed within eight months, we think the statute in that sense transgressed the limits of state power. Davis, Director General of Railroads, v. Corona Coal Company, supra."

* * *

"[6] We hold that the state statute in this instance requiring claims to be filed within eight months cannot deprive the United States of its right to enforce its claim; that the United States still has its right of action against the administrator, even though the probate court is to be regarded as having no jurisdiction to receive a claim after the expiration of the specified period.

So far as the judgment goes beyond the question of the jurisdiction of the probate court and purports to adjudge that the claim of the United States is void as a claim against the estate of the decedent because of failure to comply with the statute, the judgment is reversed."

POINT II

Petitioners' hypothesis as to the applicability of the Jones Act is erroneou .

The right to administer an estate is quite a different matter from the power of a state to nullify benefits created by remedial Federal Laws.

Petitioners concede that rights exist under the Jones Act but contend that the remedy is cut off by Florida State Law (non-claim statute). The Court below interpreted Florida State Law to sustain respondent's right to recover.

Petitioners seem to have confused the right to recover damages under Federal Law with the power reserved by each State to distribute the proceeds of an estate or to administer its assets.

A Jones Act claim against a decedent's estate is a right created by Federal Law which cannot be extinguished or diluted by State Law or probate proceedings.

The cases cited by petitioners are not persuasive as they treat with questions involving estates free from claims existing by virtue of Federal Statutes, whereas the estate in question was not.

It would seem that the state had the exclusive power to administer and distribute only that portion of the estate, which was not subject to claim by authority of the right and remedy created by the Jones Act.

The question of administration of estates and distribution of assets under State Law is not involved, as such laws treat with proceeds of an estate after charges or liabilities against the estate under Federal Law are satisfied or disposed of.

The authorities cited in their brief by petitioners under their Question 1 (pp. 8 to 16) are not persuasive since they treat with cases predicated on general maritime law and common law liability which is not the subject matter of the issue at bar. As heretofore stated, the issue presented is a right created by Federal Statute wherein the remedy is provided for and the time for commencement of action fixed by the very provisions of said act.

The rights and remedies created by the Jones Act do not impinge upon "residual" State rights guaranteed by the Tenth Amendment as provision for remedial legislation involving Maritime causes comes squarely within the powers of Congress as contained in Art. I and Art. III of the Constitution (more fully set forth at pp. 1 and 2, *ante*).

POINT III

Petitioners' endeavor to circumvent or evade the provisions of American Law by the expediency of placing their vessel under foreign registry seems inimicable to the ends of justice.

As part of the development and interpretation of the Jones Act, our courts have long since decided that the Jones Act applies to all vessels owned by United States citizens regardless of what flag they place the vessel under.[11]

The financial condition of the petitioners is not involved in the issues presented.[12]

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[11] See *Gerradin* v. *United Fruit Co.*, 60 F. (2d) 927.

[12] We respectfully submit that the financial condition of the victim's and the tort-feasors' next of kin is not a proper question for consideration herein. The fact that Petitioners are recipients of the proceeds of various insurance, including $75,000 Hull Insurance and the impoverished condition of the victim's next of kin are economic and sociological problems and do not appear to be proper subjects of discussion herein, in spite of the fact that Petitioners have invited such argument at page 26 of their brief.

Conclusion

Petitioners seek to evade legal responsibility for their wrongful act which resulted in the death of the decedent by seeking to limit the right of recovery through the medium of the general maritime law, which is not involved herein.

The next of kin respectfully pray this Court to apply a liberal construction to the applicable law as the intent of remedial legislation is to grant substantial justice.

We respectfully pray for an affirmance of the decree by the Court below.

Respectfully submitted,

MONTE K. RASSNER
and
JACOB RASSNER,
Attorneys for Respondent.

JACOB RASSNER,
HERBERT J. KAPLOW,
HARVEY GOLDSTEIN,
on the Brief.